

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

DONALD JAMES ANSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ANSWER

07-CV-0035 A(S)

The defendant, United States of America, by and through its attorney, Kathleen M. Mehlretter, Acting United States Attorney for the Western District of New York, Christopher V. Taffe, Assistant United States Attorney, of counsel, hereby answers the plaintiffs' Second Amended complaint filed on September 6, 2007, as follows:

1. The defendant admits the allegations contained in paragraphs 1A and 1B of the complaint.

2. With respect to paragraph 3, Statement of Jurisdiction, the defendant admits as to the plaintiff's information and states that the only proper party in an action pursuant to 28 USC 1346 is the United States.

3. With respect to paragraph 4 of the complaint, the defendant admits as to paragraph 4A and lacks information sufficient to form a belief as to the truth of the averments in paragraph 4B.

4. The defendant denies the allegations contained in paragraph 2 of the complaint.

5. With respect to paragraph 5, defendant generally admits that the plaintiff has alleged that an injury occurred during the course of his being transported by the United States Marshals Service on April 13, 2005, and enters a general denial as to the remainder of the allegations contained in the complaint.

4. The final paragraphs which are unnumbered, contain the plaintiff's prayer for relief statement regarding jurisdiction and exhaustion of remedies; thus, no response is required. To the extent that a response is required, these allegations are denied.

5. The United States denies each and every allegation not previously admitted or otherwise qualified.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Any damages sustained by the plaintiff were caused by the culpable conduct of that plaintiff, including contributory negligence and/or assumption of risk, and not by the culpable conduct or negligence of the answering defendant.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

If all or part of the injuries and/or damages alleged by the plaintiff in the complaint were proximately caused by negligence other than the plaintiffs, then such negligence was

the intervening or superceding act of an independent contractor and not an employee or agent of the United States.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

In the event the plaintiff is claiming any past, present or future loss, cost or expense which was or will be replaced or indemnified, in whole or in part, from any collateral source, any award to the plaintiff must be reduced by the amount of such collateral payments.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Pursuant to Title 28, United States Code, Section 2402, the plaintiff is not entitled to a jury trial.

WHEREFORE, the defendant demands judgment dismissing the complaint and for whatever further relief the Court may deem just and proper, including fees and cost.

Dated: January 22, 2009
Rochester, New York

KATHLEEN M. MEHLTRETTER
Acting United States Attorney

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